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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6876 of 1998

With

SPECIAL CIVIL APPLICATION No 6877 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNONICS LTD.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
MR JAYANT PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/09/98

ORAL JUDGEMENT

#. Rule. Mr.Jayant Patel, learned counsel appears for the respondents and waives the service of rule. With the

consent of parties, the matter is taken for final hearing today.

#. This appeal is filed against an order passed by the Commissioner (Appeals), Central Excise and Customs, Ahmedabad on March 24,1998. Being aggrieved by an order passed by the Asstt. Commissioner, Central Excise, Gandhinagar on February 11,1998, appeals were filed before the Commissioner (Appeals), Ahmedabad.

#. An objection was raised that the appeals were filed beyond period of limitation under Section 35 of the Central Excise Act,1944 (hereinafter as 'the Act') Section 35 provides that any person aggrieved by any decision or order passed under the Act, by Central Excise Officer, may file an appeal within period of three months from the date of the communication of said order. The proviso however, enables the appellate authority if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, to present an appeal within a further period of three months. The appellate authority may consider the facts and circumstances and may condone delay if he is satisfied subject to the maximum limit of three months.

#. In the present cases, the appellate authority did not think it fit to condone delay and dismissed the appeals on the ground of limitation only. A similar question arose in SCA No.5921 of 1998. In fact, three appeals were filed and all the three appeals came to be disposed by a common order by an appellate authority as time barred but only one petition was filed being SCA No.5921 of 1998. Since there were three cases and three appeals, though a common order was passed, in our opinion, the petitioners were required to file three petitions, hence on that day, only SCA No.5921 of 1998 was allowed. The same ought to be have treated as an order passed against Appeal No. 171 of 1998. We, therefore directed the learned counsel for the petitioners to file two more petitions and that is how the present petitions are on Board.

#. In Special Civil Application No.5921 of 1998 decided on 18th August,1998, we held that in facts and circumstances of the case, delay of 35 days was sufficiently explained and hence it could not be said to be unreasonable or gross. We, therefore, condoned delay. The same reason would apply in the present cases also. In the result, both petitions are allowed. Delay is condoned. Rule is made absolute. The appellate authority will now entertain appeals No.172 of 1998 and

173 of 1998 and decide the same on their merits. No
order as to costs.

(C.K.Thakkar,J.)

Date : 1-9-1998 (A.M.Kapadia,J.)

(KPP)